

APPEAL NO. 022100
FILED OCTOBER 2, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The file reflects that a benefit review conference (BRC) was held on April 8, 2002, to mediate the following two disputed issues: (1) "Who is the Claimant's treating doctor"; and (2) "What is the maximum medical improvement [MMI] date." The benefit review officer recommended that the appellant's (claimant) treating doctor is Dr. F pursuant to Section 408.022, and also recommended that the MMI date of January 3, 2002, determined by the designated doctor, Dr. H, be adopted by the Texas Workers' Compensation Commission (Commission). The Commission's letter of May 30, 2002, set a contested case hearing (CCH) on the two issues for June 26, 2002, in (city 1), Texas. The file contains correspondence reflecting that the CCH was continued to July 11, 2002. The hearing officer signed a Decision and Order on July 26, 2002, stating that a CCH was scheduled on July 11, 2002, to determine the two disputed issues; that the claimant appeared with his attorney; that the respondent (carrier) appeared with its attorney; and that prior to the presentation of any evidence, the parties reached an agreement on the disputed issues, to wit: that Dr. F is the claimant's treating doctor and that the date of MMI is January 3, 2002, as determined by Dr. H.

The hearing officer's Decision and Order states the following pertinent findings and conclusion:

FINDINGS OF FACT

3. The agreement terms set forth under the Statement of Evidence accurately reflect the terms of the agreement between the parties.
4. The agreement is in the best interest of the Claimant and the Claimant acknowledged that the agreement is acceptable to him.
5. [Dr. F] is the treating doctor.
6. The date of [MMI] is January 3, 2002, as determined by [Dr. H], the designated doctor.
7. The parties did not dispute that Claimant had an 8% impairment rating as determined by [Dr. H], the designated doctor.

CONCLUSIONS OF LAW

3. [Dr. F] is the claimant's treating doctor

In the "Decision" portion of his Decision and Order, the hearing officer states, in part, that the agreement only resolves the issues to be decided at the hearing and does not resolve all issues regarding the claim and is not a settlement.

The claimant has filed an appeal, asserting that it was his attorney who made the agreement at the hearing which resulted in the hearing officer's resolution of the two issues and that he disagrees with them. The carrier's response, which was misaddressed to the Commission and subsequently remailed, was not timely received by the Commission and will not be considered. The governing statute and Commission rules do not provide any good cause or other basis for our considering untimely appeals or responses.

DECISION

Affirmed.

Section 410.166 provides as follows: "A written stipulation or agreement of the parties that is filed in the record or an oral stipulation or agreement of the parties that is preserved in the record is final and binding."

Rule 147.4(b) provides as follows: "A written agreement reached after a benefit proceeding has been scheduled, whether before, during, or after the proceeding has been held, shall be sent or presented to the presiding officer. The presiding officer will review the agreement to ascertain that it complies with the Texas Workers' Compensation Act and these rules; if so, sign it, and furnish copies to the parties. A written agreement is effective and binding on the date signed by the hearing officer."

The hearing officer introduced as Hearing Officer Exhibit No. 1 a letter agreement dated July 11, 2002, authored by the carrier's attorney and signed by the claimant's attorney. The document is not signed by the hearing officer. The agreement reflects the parties' agreement that the claimant's MMI date is January 3, 2002, and that his treating doctor is Dr. F. Attached to this letter agreement is a letter of the same date from the carrier's attorney to the hearing officer stating that he understands the letter agreement resolves the two issues scheduled to be heard and that no CCH is necessary.

In the claimant's appeal, he states his disagreement with Findings of Fact Nos. 5 and 6 and Conclusion of Law No. 3. He maintains that Dr. F should not have determined him to be at MMI and should not have assigned him an IR; that he never wanted Dr. F to be his treating doctor; and that he wanted Dr. S to be his treating doctor and had given the Commission a form on March 13, 2001. The claimant states in conclusion the following: "My attorney made this agreement for me, and I told him I did not want [Dr. F] as my doctor. My attorney would not listen, and dropped me as soon as he made this agreement[.]"

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual determinations of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **VIRGINIA SURETY COMPANY** and the name and address of its registered agent for service of process is

**CAMBRIDGE INTEGRATED SERVICES GROUP, INC.
1501 LUNA ROAD, SUITE 102
CARROLLTON, TEXAS 75006.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Robert W. Potts
Appeals Judge